IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

1. S.B. Civil Sales Tax Revision No.621/1999

Assistant Commercial Taxes Officer, Bikaner
vs.
M/s. Standard Agriculture Services, Bikaner.

2. S.B. Civil Sales Tax Revision No.603/1999

Assistant Commercial Taxes Officer, Bikaner
vs.
M/s. Standard Agriculture Services, Bikaner.

3. S.B. Civil Sales Tax Revision No.623/1999

Assistant Commercial Taxes Officer, Bikaner
vs.
M/s. Standard Agriculture Services, Bikaner.

Date : 5.12.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sangeet Lodha, for the petitioner.

Mr. Niraj Jain for Mr.A Kothari, for the respondent.

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REPORTABLE

Heard learned counsel for the parties.

These three revision petitions have been preferred by the Revenue against the same party and, therefore,

all three revision petitions are heard together and are being decided by this common order.

FOR THE YEAR 1989-1990 :

Facts of the case are that the respondent assessee is a registered dealer under the provisions of Rajasthan Sales Tax Act, 1994 (for short, 'the Act of 1994') and according to the revenue, the respondent is engaged in the trade of sale and purchase of the tractor. The respondent assessee submitted quarterly returns for the year 1989-1990. Total four returns were submitted, two on 4.10.1989 and two on 12.4.1990. The returns were for the period 1.4.1989 to 30.6.1989, 1.7.1989 to 30.9.1989, 1.10.1989 to 31.12.1989 and 1.1.1990 to 12.4.1990. In these returns, sale of tractors were not shown by the dealer. On 19.7.1991, survey was conducted at the assessee's premises and at that time, Mr.Pradeep Narain Mathur, partner of the assessee firm, was present and when the officers of the revenue demanded books of accounts, he informed that they are not available at the business place of the assessee as they are lying with the accountant of the assessee. At that time, according to the revenue, said Pradeep Narain Mathur stated that the assessee firm is neither dealing with the trade of purchase and sale of the tractor nor they are manufacturing the tractor. The

assessee firm is dealing only in the tractor parts and for that sale, the assessee is paying tax. Again on 22.7.1991, survey was conducted in the premises of the assessee where Rajendra Kumar Mathur and Amba Lal Mathur were present and when again books of accounts were demanded by the officers of revenue, they failed to produce the books of accounts and stated that all informations are available with the partner of assessee firm – Mr.Pradeep Narain Mathur.

The assessee on 24.7.1991 submitted revised returns for the period mentioned above and disclosed the sale of 4 tractors but in the proceedings for assessment of tax and levy of penalty upon the assessee, several notices were issued to the assessee by the assessing authority but the assessee failed to produce books of accounts. According to the revenue, the revenue enquired from the manufacturing firm of the tractor namely, HMT Ltd., Chandigarh and found that the assessee is the dealer of manufacturer HMT Ltd. and purchased the tractors for sale in Rajasthan. The fact was corroborated by the information which was provided by the District Transport Authority to the Assessing Authority. Since 1985-86, he purchased 42 tractors from the manufacturing company for sale. On the basis of the evidence collected from the tractor manufacturing company and from the office of District Transport Officer, and on the basis of the reasons that the

assessee in its original returns furnished in the year 1989 did not disclose the sale of the tractors and in survey, it was stated that the assessee is not dealing in the trade of purchase and sale of the tractor whereas the manufacturing company disclosed that the assessee is the dealer of the manufacturing company for the sale of the tractor and in fact, the assessee imported tractor from the manufacturing company and this fact was corroborated by the evidence obtained from the office of the District Transport Officer, the assessing authority, after holding that the revised returns filed by the assessee were barred by time and the assessee failed to produce the books of accounts at any point of time and, therefore, if the revised returns are accepted, that will be favour to tax evaders only. The assessing authority rejected the revised returns and held that the assessee with the intention to conceal the sale and avoid tax, submitted false returns, therefore, the assessee is liable to pay the tax amount and also liable to pay the penalty under Section 16(1)(e) of the Act of 1954 of Rs.93,987.28p. with tax amount of Rs.65,985/-. Out of the total tax amount, the assessee deposited Rs.22,586/- but with delay and the remaining amount of Rs.43,399/- has not been deposited till the order was passed, therefore, interest was also imposed on the assessee. Penalty for late furnishing the Form No.66 was also imposed.

The assessee submitted one application under Section 10-C of the Sales Tax Act along with application for condonation of delay with request to give opportunity to assessee to submit his case. The said application was allowed and the assessing authority vide order dated 23.7.1992 held that the assessee did not disclose the sale of 4 tractors only in place of 5 tractors. The assessing authority again after upholding case of willful concealment of the sale by the assessee to avoid tax, took lenient view and reduced the penalty imposed upon the assessee and recalculated the amount of tax and penalty by order dated 29.7.1992.

Being aggrieved by the order of assessing authority dated 29.7.1992 for the year 1989-1990, the assessee preferred appeal before the Deputy Commissioner (Appeals), Commercial Taxes, Bikaner. The Deputy Commissioner (Appeals) in his order dated 3.11.1995 held that the concealment of sale by the assessee was with an intention to avoid the tax and further held that the books of accounts subsequently shown by the assessee are prepared books of accounts in support of its case. Some minor changes were allowed by the Deputy Commissioner (Appeals) which are not very much relevant for the purpose of deciding these revisions in view of the questions raised by the

revenue in these revisions but so far as holding the assessee guilty of concealment of taxable sale and intention of the assessee, the finding of the assessing authority was upheld by the Deputy Commissioner (Appeals).

Being aggrieved against the order of the Deputy Commissioner (Appeals) dated 3.11.1995, the assessee preferred further appeal before the Rajasthan Tax Board, Ajmer which was allowed by the Tax Board by common order dated 17.4.1998. The Tax Board was of the view that once assessee submitted Form ST 18A at the check post and entered the sale in the books of accounts, therefore, it is not a case of willful concealment of sale by the assessee.

FOR THE YEAR 1990-1991 :

For the next year 1990-1991, the assessee submitted quarterly returns on 26.7.1991. These returns were for the period ending on 30.7.1990, 30.10.1990, 30.1.1991 and 30.4.1991. The assessing authority observed that the assessee did not submit the returns till his premises were surveyed on 19.7.1991 and 22.7.1991 and the assessee sold the tractors and collected the tax amount but did not deposit the tax amount before submitting returns and the tax amount has not been deposited even upto the assessing authority

passed the assessment order dated 17.8.1992. The fact of conduct of the partner of the assessee firm at the time of survey was also taken note of and the assessing authority took note of statement of the assessee wherein he stated that he is not dealing in the sale and purchase of the tractor. The assessee for the year 1990-91 submitted written reply before the assessing authority and stated that he signed the statement recorded at the time of survey without reading the statement. He admitted that the assessee is the dealer of HMT tractors. It is also submitted that the survey was conducted in the year 1992 and, therefore, survey report cannot be considered for the assessment year 1990-91. Explanation was submitted by the assessee that because of poor financial condition, the assessee could not deposit the tax amount in time nor the assessee could deposit the return in time. The assessee stated that he is maintaining the books of accounts and all the entries of purchase and sale of tractor have been entered in the books of account. Assessee's only fault is that it could not deposit the tax amount in time.

The assessing authority was of the view that had there been no survey on the premises of the assessee, the assessee would have taken benefit and the act of assessee of not depositing the tax amount was with the intention to avoid the tax liability. The assessee avoided to produce the books of accounts at the time of

survey and he did not deposit the tax amount even after long period and till his assessment order was passed. The assessee was served with several notices which are dated 6.8.1991, 16.8.1991, 5.9.1991, 17.2.1992 and 25.2.1992, pointing out that along with the returns, the assessee has not submitted ST-1- challan and, therefore, the returns submitted without proof of payment of tax amount are liable to be rejected and the assessee is liable to pay the interest and penalty also. The assessee's explanation that he could not produce the books of accounts because they were lying with the assessee's accountant and he died subsequently, was not accepted by the assessing authority. The assessing authority further observed that despite several notice, the assessee did not produce the books of accounts or any record and, therefore, found that the assessee with the intention to conceal the tax liability, did not submit the books of accounts. The assessing authority, therefore, calculated the tax and imposed the penalty, quantum whereof is not very much relevant for the purpose of deciding these revisions.

The assessee preferred appeal against the order dated 17.8.1992 before the Deputy Commissioner (Appeals), Bikaner. Said appeal was also dismissed by the learned Dy. Commissioner (Appeals) vide order dated

2.11.1995 after holding that the assessee is guilty of suppressing the sale and deliberately did not produce the books of accounts and the books of accounts relied upon are prepared subsequently to avoid the liability of penalty etc. It will be worthwhile to mention here that the penalty amount was reduced by the Dy. Commissioner (Appeals).

Being aggrieved against the order of the Dy. Commissioner (Appeals) dated 2.11.1995 for the year 1990-1991, the assessee preferred appeal before the Tax Board whereas the revenue preferred appeal to challenge the reduction in penalty amount. Both these appeals – one by assessee and another by revenue were heard and decided by the Tax Board by common order dated 17.4.1998.

In the backdrop of these facts, the revenue has preferred three revisions against the common order of Tax Board dated 17.4.1998 deciding 3 appeals – 2 by assessee and one by revenue.

Following questions of law arise in this revision petition out of the orders of the Tax Board :-

(i)Whether in the facts & circumstances of the case the learned Tax Board was justified in

interfering with the concurrent finding arrived at by the authorities below after examining the matter in its entirety and objectivity ?

(ii)Whether in the facts & circumstances of the case the findings under Sec.16(1)(i)(e) was made out against the respondent-Dealer so as to attract the liability of penalty ?

According to learned counsel for the revenue, the facts which are not in dispute are that the assessee submitted returns for the year 1989-1990 on 4.10.1989 and 12.4.1990. In those returns, the sale of the tractor has not been disclosed by the assessee. The assessee's premises were surveyed on 19.7.1991 and 22.7.1991 i.e. after 21 and 15 months from the date of submitting returns by the assessee and there, the statement of partner of the assessee was recorded wherein he stated that the assessee is dealing in only sale of tractor parts and not dealing with the sale of tractor. The revenue collected evidence from the manufacturing company and also from the office of District Transport Officer. From the said evidence, it is fully proved that the assessee was engaged in the trade of sale and purchase of the tractor. The assessee was served with several notices and was asked to produce the books of accounts and it did not produce the books of accounts before the assessing authority is

also an admitted fact. The assessee immediately after survey submitted revised returns within two days from the date of second survey and within 5 days from first survey, wherein the assessee submitted that he sold the tractor after importing the tractor within the State of Rajasthan and this is also an admitted fact that the sale has not been disclosed in the returns which were filed in the year 1989-1990 and till assessee's premises were surveyed. The assessee sold the tractors and collected the tax amount from the customers but did not deposit the tax amount. The assessee did not produce the books of accounts at the time of survey nor he produce the books of accounts at the time of assessment proceedings and even till the assessment order was passed.

It is also submitted that from the evidence available on the record, it is fully proved that the assessee deliberately concealed the sale with the sole intention to avoid the tax. So far as the revised returns are concerned, according to learned counsel for the revenue, they were filed to cover up the allegation of concealment of sale of tractors by the assessee and were filed after inordinate delay and the assessee had no right to file the revised returns merely as per his wish at any time and to cover up his fault. The revised returns only proved the fact of sale of tractor by the assessee and that further proves that the return

submitted by the assessee earlier were wrong returns. According to learned counsel for the revenue, subsequent furnishing of the revised returns is absolutely irrelevant for the purpose of finding out the intention of the assessee at the time when it submitted false returns and, therefore, the assessing authority rightly relied upon the evidence which came on the record namely, information provided by the tractor manufacturing company and by the transport office of Bikaner and rightly reached to the conclusion that the assessee was dealing in the purchase and sale of tractors and it did not disclose its sale nor it deposited the tax amount in time quarterly nor the assessee deposited the tax thereafter and the statement of the assessee's partner before the surveying authorities that the assessee is not dealing in the sale and purchase of the tractor, therefore, from all circumstances, it is fully proved that the act of the assessee was deliberately conscious and with intention to avoid the tax.

Learned counsel for the revenue also submitted that the explanation submitted by the assessee for not disclosing the sale of tractor in original return are absolutely flimsy grounds. According to learned counsel for the revenue, it is not the case of the assessee that in the year 1989, for entire period running from 1.4.1989 to 31.3.1990, the assessee's accountant was

sick. It is not the case of the assessee that they were not having the possession of books of accounts rather from the return submitted by the assessee, it is clear that the assessee disclosed facts about sale of some items and calculated the tax amount. Therefore, in fact, there is no explanation for furnishing the false return in the department by the assessee.

Learned counsel for the respondent/assessee vehemently submitted that it is settled law that the burden to prove the conscious concealment of sale by the assessee lies upon the revenue and this burden cannot be shifted upon the assessee. It is also submitted that even mere filing of the return which is found not correct or found not disclosing the total sale by the assessee, is no ground for holding that it was conscious and deliberate act of the assessee for the purpose of avoiding the tax liability. It is also submitted that the proceedings of imposition of penalty is quasi criminal and, therefore, strict proof of intention of the assessee is required for imposition of penalty. It is also submitted that the assessee is keeping the books of accounts which were produced subsequently before the authorities. The assessee purchased the tractors and Form ST 18 was also submitted at the check post. The assessee entered all the sales in its books of accounts. The assessee

submitted revised return even before service of notice by the department upon the assessee and he disclosed the sale of the tractor. The assessing authority itself allowed the application of the assessee filed under Section 10-C of the Sales Tax Act and the assessing authority accepted the explanation submitted by the assessee for not submitting the return in time on the ground of sickness of the assessee's partner and in another case because of death of accountant of the assessee. The assessing authority, therefore, modified the order dated 29.4.1992 vide order dated 29.7.1992 and reduce the liability of the assessee even for the sale of the tractors as in earlier order, the assessing authority held that total 5 tractors were sold but in fact, only 4 tractors were sold by the assessee is relevant period.

Learned counsel for the assessee vehemently submitted that it is pure question of fact whether the act of assessee was deliberately and for the purpose of concealment and avoidance of tax and the Tax Board after considering all the relevant facts as well as law laid down by the Hon'ble Apex Court, reached to the conclusion that the assessee submitted revised returns and was keeping the books of accounts and mere furnishing the returns with omission of mentioning the sale of tractors, it cannot be a ground for imposing the penalty. The Tax Board also considered the

statement of partner of the assessee alleged to have been recorded at the time of survey and held that statement cannot be used against the assessee and, therefore, there was no material before the assessing authority on the basis of which the assessing authority could have reached to the conclusion that the assessee with the intention to avoid tax deliberately and consciously, submitted false returns. Learned counsel for the assessee relied upon the following judgments :-

(1) 61 STC 393 (Rajasthan)
(2) 97 STC 238 (Rajasthan)
(3) 74 STC 288 (Rajasthan)
(4) 76 ITR 696 (SC)
(5) 168 ITR 705 (SC)
(6) 139 ITR 902 (Madras)
(7) 118 ITR 94 (Madras)
(8) 79 ITR 499 (SC)
(9) 221 ITR 110 (Guj.)
(10) 265 ITR 562 (SC)
(11) 28 STC 700
(12) 106 ITR 452 (Patna HC)

I considered the submissions of learned counsel for the parties, perused the facts of the case and the judgments relied upon by learned counsel for the respondent/assessee.

The first judgment relied upon by learned counsel for the assessee is delivered in the case of Murarilal Ahuja & Sons vs. The Board of Revenue and others reported in (1986) 61 STC 393 wherein the Division Bench of this Court after considering the provisions of Income Tax Act particularly, under Section 27(1)(c) in the matter arising out of Rajasthan Sales Tax Act, 1994 held that the penalty under Section 16(1)(e) of the Sales Tax Act can be imposed in a case where there is a conscious concealment of particulars or there is a deliberate furnishing of inaccurate particulars in the return submitted by the assessee. The Division Bench held that mere non-disclosure of a great magnitude of a transaction is not such a circumstance by itself which should undoubtedly lead to the conclusion that there was a real intention on the part of the assessee to conceal the sales. The finding in the assessment proceeding in respect of the disputed turnover (in the said case) may be evidence in the penalty proceedings but it cannot be conclusive for imposing penalty. The Division Bench also held that the entire circumstances should be considered and positive findings should be recorded either that there was a conscious concealment of particulars in the return or the dealer has deliberately furnished inaccurate particulars therein. Emphasis of learned counsel for the assessee is on the

observation of the Division Bench of this Court where the Division Bench took note of the fact that prior to the completion of the assessment of the assessee, the assessee voluntarily filed revised trading account and return in which the turnover involving a huge amount that was detected as concealed was shown. According to learned counsel for the respondent, the view taken by the Division Bench of this Court after considering several earlier judgments, hold field till today as is clear from the various judgments relied upon by learned counsel for the respondent.

In Murarilal's case (supra), the judgment of Hon'ble Apex Court delivered in the case of Commissioner of Income Tax vs. Anwar Ali reported in (1970) 76 ITR 696 (SC) was also considered. The Hon'ble Apex Court in Anwar Ali's case (supra) clearly held that before penalty can be imposed, the entirety of the circumstances must reasonably point to the conclusion that the disputed amount represented income and that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars. Anwar Ali's case (supra) was followed in the case of Anantharam Veerasinghaiah & Co. vs. Commissioner of Income-tax reported in (1980) 123 ITR 457 (SC) and it has been held by the Hon'ble Apex Court that it is now settled law that an order imposing a penalty is the result of quasi-criminal proceedings and

that the burden lies on the revenue to establish that the disputed amount represents income and that the assessee has consciously concealed the particulars of his income or has deliberately furnished inaccurate particulars. The Hon'ble Apex Court also held that it is for the revenue to prove those ingredients before a penalty can be imposed. After considering the various judgments on the point including Anwar Ali's case (supra), the Division Bench of this Court in Murarilal's case (supra) remanded the matter back to the lower authority with a direction to examine the question whether the concealment was not conscious or that the assessee had not deliberately furnished inaccurate particulars of his income in the light of the decisions referred in the judgment.

In the light of the above judgments and in view of the fact that the said position on the point of law holds the field even today, it is clear that (1) imposing of penalty is result of quasi criminal proceedings, (2) burden lies upon revenue to establish : (a) the assessee has consciously conceal the particulars from returns furnished by him or, (b) has deliberately furnished inaccurate particulars in the return.

In none of the judgments relied upon by the learned counsel for the assessee, it has been held that the entries in books of account of relevant sale of

goods is conclusive proof against the department's case of conscious concealment of particulars or deliberate furnishing inaccurate particulars by the assessee where the asessee himself has submitted inaccurate particulars or has concealed the particulars in the returns. In admitted case of concealment of particulars in the return and furnishing inaccurate particulars, fact of non-mentioning of particulars or wrong particulars in the returns stand proved by the admission of the assessee. Giving wrong particulars or not giving of particulars in return is a question of fact and can be proved from documents and from admission of assessee. In case, the assessee furnishes revised returns, it may be an admitted case falling in either of the two categories ; furnishing of wrong particulars or concealment of particulars by assessee. This fact or admission itself is no proof of assessee's “deliberate” or “willful act” nor it itself demonstrate intention of assessee of furnishing wrong particulars or hiding particulars as “conscious” or “deliberate” but it may indicate towards intention of the assessee. Once furnishing of wrong particulars or hiding of particulars in the return is proved or admitted, the question remains for adjudication is whether the concealment or furnishing of inaccurate particulars in returns is “deliberate” or “conscious” act of the assessee. To prove that the assessee consciously and

deliberately submitted wrong returns, the revenue will have to prove that the complete and correct particulars were in the knowledge of the assessee. Unless facts are not in the knowledge of the assessee, how he can consciously and deliberately furnish the wrong returns ? The revenue for this purpose and to discharge their burden of proof about the knowledge of assessee of true and complete facts can rely upon the assessee's own account books and other documents. This is one of the evidence as well as circumstance for proving intention of assessee though as held in various earlier decisions, this fact alone may not be sufficient to draw inference of act of assessee to be deliberate and conscious but when assessee fails in giving any explanation why the wrong returns were furnished by him despite his having knowledge of correct particulars, this circumstance becomes very relevant for consideration against the assessee. In view of the above, it cannot be said in all cases that if correct entries are in books of account and in relevant documents, then in all cases, assessee cannot be held guilty of furnishing inaccurate particulars or concealment of particulars deliberately and consciously.

To make it clear, suppose an assessee furnishes return with inaccurate particulars in it or has

furnished returns concealing the particulars. The assessing authority demands production of books of accounts and bill books as well as other relevant documents. The assessee, who was knowing it well that he has concealed the particulars in the return and deliberately furnished inaccurate particulars by mere production of books of account and other documents will not be penalised inspite of the fact that the department has proved that the assessee had knowledge of correct particulars and has furnished wrong particulars in the returns and then go scot free without any explanation for his furnishing wrong returns containing facts which were in his own knowledge were wrong. Thereby, the revenue will be deprived from relying upon the best evidence, that is the admission of the assessee about correct particulars in the knowledge of the assessee which ordinarily may be sufficient for discharging burden of revenue that the assessee has knowingly furnished wrong particulars in return and consequently the act of furnishing inaccurate particulars in return is deliberate.

Another example given by the learned counsel for the assessee is also quite attractive. According to learned counsel for the assessee, if it was the intention of the assessee to suppress the sale in the returns, he would not have made entries in his books of accounts and he would not have issued bills for sale

nor he would have submitted Form ST 18 at check post. The assessee would have either separate books for the sale which he wanted to suppress or he would have slips or lose papers for such sale. If this plea is accepted, then that will be contrary to law laid down in the judgments relied upon by learned counsel for the assessee because of the reason that separate books of account and slips or separate bill books are the direct proof of guilt of assessee and it is not law that guilt of assessee can be proved only by direct evidence. Contrary to it, law is that for mental state of a person, there may not be direct evidence. For intention of any person, normally, it is difficult to produce any direct evidence and because of this reason, the view has been taken in almost all the cases that the issue can be proved and should be judged from all circumstances.

Viewed from another angle, if the contention of the learned counsel for the respondent is accepted, then that will be a license to the dishonest traders to maintain the books of accounts accurately and furnish wrong returns and take chance of decision of the assessing authority on the basis of the returns which the assessing authority can rely upon in case, he is of the view that no further enquiry is needed. Such dishonest person will be safe in as much as, that in

case, the assessing authority will found assessee's returns wrong and that wrong is in the knowledge of the assessee, still the assessing authority can only demand tax amount and interest over the due tax amount and that liability upon the assessee, may be more suitable in place of paying the amount of actual tax in time and thereafter, making payment of tax with interest after round of litigation by preferring appeal and further appeal etc. In very many cases, the businessmen are not earning mere interest over the money, may it be higher rate of interest. Otherwise also, there is no reason to hold that a person having knowledge of complete facts, keeping regular account books and relevant documents while furnishing returns only or at the time of depositing tax, will not look into his own account books and forget to deposit the tax without any reason.

To decide the question whether the concealment was conscious or not or that the assessee has deliberately furnished the inaccurate facts in the return submitted by him is required to be decided as per the facts of each case because since the case of Anwar Ali or even prior to that, the view taken by the Hon'ble Apex Court is that for deciding this issue, the entirety of circumstances must be looked into. Some of the facts out of the total circumstances cannot be the basis for imposition of penalty in view of the fact that the

imposition of penalty is a penal action against the defaulter and for that, the Hon'ble Apex Court observed that the proceedings for imposition of penalty is a quasi criminal proceedings.

One of the circumstance which was noticed in most of the judgments relied upon by learned counsel for the respondent was that the return was submitted by the assessee with wrong particulars but the assessee submitted revised return before the assessment order was passed by the assessing authority and in those cases, Courts held that imposition of penalty cannot be sustained. This view appears to have been taken on the basis of other facts and circumstances of the particular case and in that, one of the circumstance was the “time” at which the assessee submitted revised return.

Though it is not possible to catalogue all the circumstances which may be sufficient for declaring the assessee guilty under Section 16(1)(e) of the Act of 1954 but some of facts are required to be proved before holding the assessee guilty for his deliberate or willful act in furnishing wrong particulars or in hiding particulars from returns and they may be :-

(1)Revenue to prove particulars in return are wrong or have not been furnished by the

assessee.

(2)The act of assessee is conscious and deliberate in furnishing inaccurate particulars or in hiding particulars.

(3)The assessee had knowledge, at the time of filing returns, of true and correct fact or reasonable inference can be drawn that assessee had knowledge of true and correct facts.

(4)If direct evidence like double record or documentary evidence is available than that should be collected by revenue.

(5)In addition or in absence of direct evidence, circumstantial evidence may prove the above issue. The circumstantial evidence may be :-

(a) Returns are wrong (proved or admitted)

(b) Assessee had knowledge (from direct evidence) or could have knowledge (from circumstantial evidence).

(c) Circumstance by which assessee could not have ignored the true facts.

(d) Assessee has furnished the particulars in the return where in particulars are wrong or are not shown and the assessee could not have calculated the figures of sale and purchase of the articles which he has provided in the return without noticing the correct particulars or particulars

which have not been given by the assessee.

(e) the time, at which assessee furnished the correct and revised return and the circumstance in which revised return was furnished.

(f) whether there is admitted liability of tax for the items not shown in return or which have been wrongly shown.

The above facts in isolation or one or some out of all above may not be sufficient to prove the guilt of assessee of his act being conscious and deliberate and at the same time may be sufficient for holding him guilty and that all depend upon facts of each case. But the necessary ingredients are that particulars given in return are wrong or are concealed from returns. The list given above is not exhaustive as there cannot be exhaustive list of all circumstances from which guilt of assessee can be proved to be deliberate or conscious act.

In view of the above legal position, the facts of this case may be again recapitulated. The assessee submitted quarterly returns for the year 1989-1990. Total four returns, two on 4.10.1980 and two on 12.4.1990, were submitted by the assessee disclosing the particulars relevant for the purpose of imposition of tax under the Sales Tax Act. These returns have been

given by the assessee himself and apparently they must have been given on the basis of the documents lying with the assessee. There is no case of the assessee that the particulars furnished in the returns were not furnished on the basis of the entries available in the books of accounts. The assessee nowhere disclosed how the figures which have been furnished by the assessee in original return came in the knowledge of the assessee for four quarters without noticing the sale figures of sale of tractors. Be it as it may be. The time at which assessee furnished revised returns is also important. The assessee's premises were surveyed on 19.7.1991 and 22.7.1991 i.e. more than one year from the assessee's first return and about 9 months from the last return submitted by the assessee originally. The relevant fact is that the premises of the assessee was surveyed and even if it is ignored that what fact came to the notice of the department's officers, the fact remains is that the assessee submitted revised returns only after two surveys. The time of filing revised returns is relevant. Firstly assessee did not submit revised return for about two years and secondly, he submitted revised returns within four days only from the date of survey of his premises. Further circumstance against the assessee is that it failed to give sufficient reason as were in existence at the time of furnishing first returns for giving wrong

particulars. If the assessee was not in possession of the books of accounts, then how he mentioned the figures in the returns and if these figures were from the books of accounts of the assessee, then how he could have furnished the incomplete or wrong particulars without noticing of sales in dispute ?

Returns were furnished on 4.10.1991 for the period commencing from 1.4.1989 to 30.6.1989 and thereafter quarterly, as mentioned above, and if the contention of the assessee is accepted, then books of accounts were lying with the assessee itself, it brought the tractors with the State of Rajasthan after furnishing the Form ST 18 at check post, it issued the fills for sale of tractors and made entries in the books of accounts, then the assessee was knowing full well that it is to deposit the tax amount also on the sale of tractors. The explanation given by the assessee for not depositing of the tax is that the assessee's financial condition was poor. Since entirety of the facts are required to be considered for finding out whether it is deliberate concealment by dealer or not. The explanation submitted by the assessee appears to be too weak to be accepted. It is true that some mistakes may be committed but if there is a series of mistakes resulting into benefit to only a wrong doer, then that is sufficient proof that mischief has been projected as mistake. It is not possible that the person engaged in

a trade will not know what are the entries in the books of accounts and he will not look into the books of accounts while furnishing the return and will not look into liability for tax, even if his premises has not been surveyed and in the circumstance that books of accounts were not produced inspite of notices for production of books.

If the assessee did not produce the books of accounts before the assessing authority till the assessment order was passed on 24.4.1992 for the year 1989-1990 for which several notices were given to the assessee, the Deputy Commissioner (Appeals) rightly held that the books of accounts produced subsequently appears to have been prepared for particular purpose. Non-furnishing of the books of account till the assessment order dated 29.4.1992 also goes against the assessee.

It is not the case of the assessee that the assessee himself found mistake in the return subsequently during the course of scrutiny of its case for assessment of tax nor it is a case of assessee that it was not liable to pay the tax at all on sale of tractors, therefore, not a case of bonafide belief of assessee that assessee is not liable for tax but assessee's plea was rejected by the assessing authority which may be a fact indicating lack of guilt of

assessee in certain circumstance. Had it been a case of agitating the issue of liability of tax upon the assessee, the rejection of defence of assessee may not have been a circumstance against the assessee for holding the assessee guilty of deliberate concealment of sale and payment of tax over that sale. In fact, the assessee's total case is that it had full knowledge that it is dealing in the trade of purchase and sale of tractors. The assessee purchased the tractors for the purpose of sale, it sold the tractors by issuing the bills and entered all sales in its account books, then it was for the assessee to explain that it was a mistake and not mischief. For the purpose of discharging initial burden of proving the fact of concealment of tax, resulting into the benefit to the assessee, as stated above, the revenue collected evidence by survey in assessee's premises, collected evidence from the manufacturing company and transport office, thereafter gave opportunity to assessee to produce books of account which were not produced till first assessment order was passed against the assessee and produced the books subsequently, which only proved the fact that in all reasonable presumption, the assessee had knowledge of correct figures and he did not give correct figures in returns. The particulars which assessee could have given in four days as he did were not furnished for almost two years. There is no

explanation what were the circumstances at the time of filing returns with wrong particulars and saying assessee's accountant was sick after filing of returns with wrong particulars is no explanation for giving wrong particulars. The entirety of circumstances clearly reveals that the revenue fully proved the case of assessee's furnishing false returns consciously and deliberately. The beneficiary is assessee only and the explanation submitted by the assessee for its mistake cannot be accepted.

The Tax Board applied the abstract principle of law laid down in the case of Assistant Commercial Taxes Officer vs. Kumawat Udhyog reported in (1995) 97 STC 238 failed to consider all the circumstances of the case in hand and has not considered the finding recorded by the Dy. Commissioner (Appeals) with respect to credibility of the books of accounts particularly with respect to the time of submitting of books of accounts by the assessee.

The Tax Board for the reasons not made clear in the impugned order only took note of the fact that according to the assessee, the tractors were imported by the assessee from the manufacturing company and declaration under Section ST 18A was made before the check post and there are entries in the books of accounts of the assessee about sale of tractors and if

it is true then that is sufficient to hold that the assessee had full knowledge of its trade for sale of tractors at the time of filing of the returns. The Tax Board has drawn wrong conclusion from the explanation submitted by the assessee for not giving true and correct particulars in the original returns. None of the judgments relied upon by the learned counsel for the respondent out of so many judgments, lays down that in case, inaccurate returns are furnished but there are entries in the books of accounts of the assessee and the bills are issued by the assessee, then only on that ground, the assessee cannot be penalised for furnishing inaccurate particulars in return with intention to take benefit of avoiding tax.

The law laid down by the Courts in the judgments referred above is only to the effect that mere non-disclosure of some sale or some particulars are wrongly mentioned in the return itself cannot be a ground to held the intention of the authority to avoid the tax for the purpose of levy of penalty, therefore, in all the judgments, it has been held that the entirety of the circumstances is required to be examined before imposing penalty upon the assessee on the ground of conscious concealment of particulars or for furnishing inaccurate particulars in the return. The Tax Board also accepted the plea of the assessee that the assessee's one of the partners – Pradeep Narain Mathur

was sick and their business was in financial constrains but without recording any finding about period of alleged sickness of Pradeep Narain Mathur. This is relevant because of the reason that the returns were submitted in the year 1989. Premises of the assessee were surveyed in the year 1991 and the assessment order was passed in the year 1992 originally i.e. on 24.4.1992. Just after passing of the order dated 24.4.1992, the assessee submitted application on 1.6.1992 under Section 10-C of the Sales Tax Act and further relevant fact is that the assessee's premises were surveyed on 19.7.1991 and 22.7.1991, all disabilities went away within a period of two days and the assessee could file the revised return on 24.7.1991. The entirety of the circumstances includes the timings also on which the assessee acted.

The Tax Board in its order dated 17.4.1998 did not discuss the reasons given by the assessing authority or by the Deputy Commissioner (Appeals) which is apparent from the reasons given in the order dated 17.4.1998.

One of the contention of learned counsel for the respondent/assessee was that it is a pure question of fact that what was the intention of the assessee in submitting the returns which had some wrong particulars and, therefore, this Court may not interfere in the

order. The facts clearly reveal that it is not a case of re-appreciation of evidence but it is a case where the Tax Board has drawn wrong conclusions from the proved and admitted facts and further has committed error of law by ignoring the finding of fact about intention recorded by the assessing authority and the appellate authority about the intention of the assessee in furnishing the return with wrong particulars.

So far as the assessment year 1989-1990 is concerned, the Tax Board committed error of law in allowing the appeal of the assessee. The order of the Tax Board for the assessment year 1989-1990 is set aside. The order of Deputy Commissioner (Appeals) for the assessment year 1989-1990 is upheld.

The facts of the case of the assessment year 1990-1991 are entirely different because of the reason that the fact situation which was in the assessment year 1989-1990 was there was not in the case of assessment year 1990-1991, that is clear from the facts that for the assessment year 1990-1991, the assessee did not submit the return with wrong particulars and mere delay in filing return by the assessee was considered as if the assessee has deliberately filed return to avoid tax. It is clear from the facts of the case that for the year 1990-1991, the assessee did not submit the

return containing the wrong particulars or submitted returns suppressing any particulars from the return. Consequently, the order of the Tax Board allowing the appeal of the assessee for the assessment year 1990-1991 is sustained. Revenue's revision no.623/1999 against the order of Tax Board in Appeal No.593/9/ST/Bikaner is also dismissed.

In view of the above, the revision petitions filed by the Revenue so far as they relate to the assessment year 1989-1990 are hereby allowed. However, the revision petition filed by the Revenue in relation to challenge to the order of the Tax Board for the assessment year 1990-1991 is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya